

HIGH COURT OF TRIPURA
AGARTALA

WA 156 OF 2021

1. The Union of India

Represented by the Secretary to the Ministry of Home Affairs,
Having its office at South Block, New Delhi-110001.

2. The Secretary,

Ministry of Home Affairs, Government of India,
Having its office at South Block, New Delhi-110001.

3. The Director General,

Central Reserve Police Force, CGO Complex,
Lodhi Road, New Delhi-110003.

4. The DIG(CR & Vigilance),

Central Reserve Police Force, CGO Complex,
Lodhi Road, New Delhi-110003.

....Appellants.

Vrs.

Sri Vinay Kumar Rai , son of Shri Brahmeshwar Nath Rai,
Holding the post of DIG, CRPF, presently residing at Usha Bazaar,
Airport Road, P.O. Usha Bazaar, P.S. Airport, Sub-Division-Agartala,
District-West Tripura.

AND 34 others.

...Respondents.

For the appellant(s) : Mr. Bidyut Majumder, DySGI

For the respondent(s) : Mr. Saptarshi Majumder, Advocate.

Date of hearing & date
of delivery of : 04.05.2023
judgment and order

Whether fit for
reporting : Yes

**HON'BLE MR.JUSTICE T.AMARNATH GOUD
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER(ORAL)

[T.Amarnath Goud, J]

This writ appeal is directed by the appellants i.e. the original respondents of the writ petition against the judgment and order dated 28.01.2021, passed by the learned Single Judge of this court in WP(C) No.1280 of 2017 whereby the learned Single Judge had allowed the writ petition.

2. The petitioner, the respondent no.1 herein, in the writ petition had sought for the following reliefs:

“In the premises whereof, it is most humbly and respectfully submitted that Your Lordships would be graciously pleased to:

- i) *Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for calling for the records, lying with the respondents, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Order dated 13.08.2015 (Annexure-14 supra), and the various Orders of promotion (Annexure-18 supra);*
- ii) *Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to revoke/rescind the impugned Order dated 13.08.2015 (Annexure-14 supra), the impugned Order dated 17.03.2016 (Annexure-16 supra), and the various Orders of promotion (Annexure-18 supra), and restore the seniority of the petitioner, over the private respondents, as on the rank of the Commandant in the Central Reserve Police Force, and consider the case of the petitioner, for*

promotion, to the rank of DIG in the CRPF, with effect from 05.06.2-12, and thereupon, accord promotion, to the rank of DIG in the CRPF, to the petitioner, with effect from the said date, with all consequential benefits including seniority.”

3. After hearing both sides, the learned Single Judge allowed the writ petition with the following observations and directions:

“15. Under the circumstances, impugned orders dated 13.08.2015 and 17.03.2016 are set aside. Resultantly, the official respondents shall open the sealed covers of the DPCs which considered the petitioner’s case from time to time and act on the recommendations in view of quashing of the penalty imposed on the petitioner. If for some reason the petitioner’s case was not considered and kept in sealed cover, the department would draw a review DPC for considering the case of the petitioner when for the first time his junior was considered and promoted. As and when the petitioner gets such promotion, the same would be retrospective from due date with consequential seniority benefits and pay fixation but not actual arrears of salary from the retrospective date of promotion till actual promotion which I am told has already been granted to the petitioner subsequently. Entire exercise shall be completed within a period of six months from today.

With these observations, petition is disposed of.”

Being aggrieved by and dissatisfied with the impugned judgment and order, the respondents-Union of India have preferred the present writ appeal before this court.

4. The case of the appellants is that the respondent Sri Vinay Kumar Rai, Commandant, 41 Bn. CRPF was functioning as a Presiding Officer of a Recruitment Board of the Eastern Sector for recruitment of Constable (Technical)/Tradesmen at Group Centre, CRPF, Durgapur which had been conducted during the period from 26.12.2006 to 06.01.2007.

While acting as such, the respondent-petitioner had committed serious misconduct in fair and impartial selection of the candidates for which the deserving candidates were deprived of the selection as physical examinations and trade test were tampered to favour some other candidates unlawfully. He had lack of integrity and devotion to his duty. For such alleged misconduct, a departmental proceeding was initiated against the respondent-petitioner and after completion of departmental proceeding, the disciplinary authority, i.e. the DIG(CR & Vigilance) of Central Reserve Police Force, Ministry of Home Affairs vide order dated 13.08.2015 imposed a penalty/punishment upon the respondent-petitioner to the extent of *reduction to lower stage in the time scale of pay by one stage for a period of one year without cumulative effect*. The respondent-petitioner had preferred appeal against the said impugned order before the appellate authority, but, the appellate authority had dismissed the appeal affirming the order of disciplinary authority.

5. We have gone through the impugned order dated 13.08.2015, passed by the disciplinary authority and the relevant portion of the said order is reproduced here-under:-

“....

14.NOW, THEREFORE, in the light of above and having regard to all aspects of the case as well as considering the advice of the UPSC, the President considers that the ends of justice would be met, if the penalty of “reduction to lower stage in the time scale of pay by one stage for a period of one year without cumulative effect

and not adversely affecting his pension” i.e. from Rs.51,500/- to 49,750/- w.e.f. 1/9/2015 in the pay band of Rs.37,400-67,000/- with Grade Pay of Rs.8700/-, is imposed upon V.K.Rai, Commandant (IRLA-3370) of 41 Bn (now posted in GC, CRPF, Muzaffarpur and orders accordingly.”

6. We have heard Mr. Bidyut Majumder, learned DySGI appearing for the appellants-Union of India and Mr. Saptarshi Majumder, learned counsel appearing for the respondent-petitioner.

7. Mr. Majumder, learned DySGI has refuted the contention of the respondent-petitioner that was urged before the learned single Judge by filing the writ petition that the time consumed from initiation and completion of departmental inquiry of the matter relating to the charged officer, suffered from gross delay. It is contended by Mr. Majumder, learned DySGI that large number of alteration and cuttings established that the charged officer acted in a negligent manner in conducting the recruitment test. The junior officers were promoted since the petitioner was facing departmental proceeding, his case was kept in sealed cover by the DPC for the vacancy year 2012-13, 2013-14 and 2015-16 and vide order dated 13.08.2015 the aforesaid penalty/punishment was imposed upon him. As such, sealed cover was not acted upon as per DPC rules upto 13.08.2016. Therefore, promotion of officers junior to the respondent-

petitioner was within order. So, the delay has not caused any prejudice to the petitioner.

8. Mr. S. Majumder, learned counsel appearing for the respondent-petitioner submitted that the punishment imposed upon the petitioner has badly affected promotion of the respondent-petitioner. He has been superseded by his junior officers. He further submitted that the charge levelled against the respondent-petitioner was baseless and fabricated out of ill motive. Hence, he prayed for dismissal of the appeal.

9. On careful reading of the judgment and order of learned single Judge, it appears to us that learned single Judge has vividly discussed the issue of delay in initiation and completion of the inquiry and was of the opinion that the delay in the present case is not so grave in nature since the petitioner has neither pleaded nor proved any prejudice in his defence during the departmental inquiry for such delay. We are of the view that learned single Judge has rightly observed that during departmental proceeding a considerable time is required to complete the same as there are some formalities to be followed such as, records are to be produced and witnesses are to be examined.

10. We have seen that the respondent-petitioner by filing a reply to the inquiry report has denied every aspect and every finding at length. It

is clear that the respondent-petitioner was the Presiding Officer of the Recruitment Board. Certainly there were other members also, but, we find no convincing evidence of any of the members of the Board came out from their depositions that the charged officer had manipulated the result sheets of the candidates during the recruitment process for which the deserving candidates had been deprived of. The members of the selection committee unequivocally denied that the charged officer was guilty of any manipulation of the records of the selection committee and that all such corrections in the records were made in their presence. Further, it is apparent that the disciplinary authority did not even suggest to cancel the recruitment process if there were any gross illegalities in selecting the candidates. Had there been any types malpractice on the part of the charge-officer in respect of such a serious issue, particularly, in a recruitment process, the disciplinary authority would not have awarded a minor punishment as we have seen in the impugned order dated 13.08.2015. Having gone through the depositions of the members of the selection committee and the reply of the charged officer filed at the time of disciplinary proceeding, this court does not find any cogent and convincing evidence that the charged officer most negligently committed any misconduct in the alleged recruitment process and that he deliberately and wilfully changed and altered any result sheets of the deserving candidates.

11. In view of the above perspective, we do not find any infirmities to interfere with the judgment and order dated 28.01.2021, passed by the learned Single Judge in WP(C) No.1280/2017 and accordingly, the same is affirmed.

The appeal stands dismissed.

In regard to the time granted for compliance of the order passed by the learned Single Judge which has been indicated in the said order, learned DySGI appearing for the appellants seeks further 3 (three months) time to complete the exercise. Considering the request, further three months time is allowed from today. It is made clear that no further time would be granted.

12. The writ appeal is, accordingly, disposed of. Pending application, if any, shall also stand disposed of.

JUDGE

JUDGE